

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Original Jurisdiction

Dated: Nainital: the 26th **day of** November 2002

Criminal Misc. Bail Application No. 1182 of 2002

Order on the Bail Application of the accused Yusuf alias Guddu son of Hasan Raja, R/o Milak Hasham (Hashampur), P.S. Bhot, District Rampur

CRIMINAL SIDE

Yusuf alias Guddu son of Hasan Raja, ..Applicant
R/o MilaK Hasham (Hashampur),
P.S. Bhot, District Rampur

Versus

State of Uttaranchal.

.....Opposite Party

Arising out of Case crime no. 294 of 2002,
Under sections 302/394/411/ of I.P.C.,
P.S.Rudrapur
District Udham Singh Nagar

AND

Criminal Misc. Bail Application No 1185 of 2002

Yusuf alias Guddu son of Hasan Raja, ..Applicant
R/o Milak Hasham (Hashampur),
P.S. Bhot, District Rampur

Versus

State of Uttarakhand

.....Opposite Party.

Arising out of Case crime no. 299-A of 2002,
Under sections 25/27 Arms Act,
P.S.Rudrapur
District Udham Singh Nagar

Hon'ble Irshad Hussain:

Accused-appliant is not named in the F.I.R. There is allegation of recovery of cash and gun belonging to the deceased, which according to the prosecution, were stolen from the scene of the occurrence and perhaps the murder was then committed.

Perused the Annexures to the counter affidavit which are the Parchas of the casse diary. The memo. of recovery is endorsed on Parchas nos.973713 and 973714 and whereas the statement of the accused said to be leading to the recovery and disclosing the fact as contemplated under section 27 of the Evidence Act was recorded subsequently on the Parchas from 973715 to 973717. As pointed out this clearly indicates that the recovery cannot be taken to be at the instance of the applicant-accused because the fact leading to recovery is only admissible under section 27 of the Evidence Act which has not been recorded in this case prior to the actual alleged search the recovery. Considering indissmissibility of such an evidence and the facts and circumstances of the case, in my view it is a fit case for bail in the offences under sections 302/394/411 of the I.P.C.

Considering the above facts and the doubtful recovery, the applicant is also entitled to bail in the offence under section 25/27 of the Arms Act.

Let the applicant Yusuf alias Guddu son of Hasan Raja, R/o Milak Hasham (Hashampur), P.S. Bhot, District Rampur be released on bail in case crime no. 294 of 2002, under sections 302/394/411 of I.P.C., P.S. Rudrapur, District Udham Singh Nagar and case crime no. 299-A of 2002, under sections 25/27 Arms Act. P.S. Rudrapur, District Udham Singh Nagar on his filing a personal bond and adequate sureties each in these two crime numbers separately to the satisfaction of C.J.M., Udham Singh Nagar.

(Irshad Hussain)

26.11.02./B.